APPELLANT, PRO SE:

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ATTORNEY FOR APPELLEE:

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IN THE
COURT OF APPEALS OF INDIANA

ELIZABETH A. NOWAK,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 02A03-0602-CV-81
	)	
MARTIN J. ECKERT,	)	
	)	
Appellee.	)	

APPEAL FROM THE ALLEN CIRCUIT COURT
The Honorable William C. Fee, Special Judge
Cause No. 02C01-9510-DR-1308

August 23, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Elizabeth Nowak (Mother), appeals the trial court's Order in favor of Appellee-Respondent, Martin Eckert (Father), finding that she was in arrears on her child support obligation in the amount of $4,613.00, and concluding that she failed to prove that Father violated specific court orders relating to their minor child's care.

We affirm.

ISSUES

Mother raises three issues on appeal, which we consolidate and restate as the following two issues:

(1) Whether the trial court properly ordered Mother to pay the accumulated child support arrearage; and

(2) Whether the trial court abused its discretion when it found that Father was not in contempt of court with regard to parenting time exchanges.

FACTS AND PROCEDURAL HISTORY

In 1997, Mother and Father were divorced. Under the terms of the divorce decree, custody of D.E., the parties' minor child, was awarded to Father. Mother, a pilot for Federal Express, was ordered to pay child support in the amount of $95 per week.

On November 16 and 17, 2004, Mother and Father appeared in the Allen Circuit Court for an evidentiary hearing in order to reach an agreement on certain disputed matters pertaining to parenting and visitation. On November 17, 2004, the parties stipulated to all issues except child support. Under the agreement ratified by the Allen Circuit Court, Father continued to have sole custody of D.E. The parties agreed to

consult each other on D.E.'s major health care and educational issues, and established that Reverend Tom Smith would act as a parent coordinator to help the parties resolve issues relating to D.E.'s parenting. The agreement also provided that the parties would attend therapy or professional counseling with a mutually selected professional counselor. Further, the agreement contained provisions relating to parenting time with D.E., and provided that the parties would have equal parenting time, with D.B. staying with each parent on alternate weeks Friday to Friday. The parties adopted the remaining terms of the Indiana Parenting Time Guidelines.

The court also awarded Mother a $500.00 reduction in her annual support and ordered her to utilize those monies for providing clothing for D.E. while he is with her. Father was ordered to pay for D.E.'s hockey-related expenses. The parties agreed that Mother should pay an additional $4,000.00 for D.E.'s tuition at the Canterbury School, and that the parties would share the tuition expenses for the 2005-2006 school year and thereafter. Finally, because Mother and Father anticipated remarrying, the parties included a provision requiring D.E. to attend each ceremony.

On December 8, 2004, the trial court issued its Special Findings and Order Regarding Child Support. The trial court ordered as follows:

> 1) Being duly advised, [Mother's] child support obligation shall be $81.00 per week.
>
> 2) The obligation shall not be retroactive to the date of filing [November 17, 2004] in consideration of other child care costs [mother] has paid. The order commences on this date.

3) Pursuant to the stipulation of the parties, [Father] shall pay the first $1,061.00 per year of uninsured medical, dental and optical expenses. Thereafter, [Mother] was ordered to pay 64% and [Father was ordered to] pay 36%.

On December 27, 2004, Father filed a Verified Information for Contempt alleging that since October 22, 2004, Mother had failed to make any child support payments as ordered by the court. Additionally, Father alleged that Mother had accumulated an arrearage prior to that date of over $4,000.00.

On July 28, 2005, Mother filed a Response to Verified Information for Contempt. Additionally, on July 28, 2005, Mother filed two separate actions for contempt. Her first Verified Information For Contempt of Court and Request for Attorney Fees alleged that Father returned D.E. at 7:20 p.m. on January 28, 2005, the Friday before her wedding, thereby preventing D.E. from attending Mother's wedding rehearsal dinner. The contempt action also alleged that Father was consistently late in his payment of D.E.'s tuition at his private school. Mother's second complaint alleged that Father brought his new spouse to a joint therapy session.

On August 3, 2005 and December 23, 2005, evidentiary hearings were held with regard to Mother's allegations of contempt and Father's allegations of child support arrearage. On January 3, 2006, the trial court ruled that Mother had accumulated a child support arrearage in the amount of $4,613.00, and entered a judgment in favor of Father in the sum of $4,613.00. The trial court also ordered Mother to pay an additional $25.00 per week toward the child support arrearage.

Also on January 3, 2005, the trial court granted Mother's Rule to Show Cause regarding Father's unwillingness to attend parenting skills counseling. The trial court

ordered Father to attend future counseling sessions without his spouse in the room during the session; and Mother was awarded $250.00 for attorney fees related to this issue. Additionally, the trial court found that Father did not willfully violate any order with regard to parenting time exchanges, non-payment of tuition, and reimbursement of expenses.

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Waiver*

It is well settled that an appellant has the duty to both present a record adequate for intelligent appellate review on points assigned as error, and to present an argument supported by authority and references to the record pursuant to Ind. App. R. 46(A)(8). *AutoXchange.com, Inc. v. Dreyer & Reinbold, Inc.*, 816 N.E.2d 40, 45 (Ind. Ct. App. 2004); *Lasater v. Lasater*, 809 N.E.2d 380, 389 (Ind. Ct. App. 2004). Appellate Rule 46 provides that the Appellant's Brief must contain a Summary of Argument section containing a succinct, clear, and accurate statement of the arguments made in the body of the brief. Additionally, the Argument must contain contentions of the appellant on the issues presented, supported by cogent reasoning and citations to authorities, statutes, and the Appendix. *See* App. R. 46(A)(8)(a).

In the present case, Mother's Brief fails to follow the requirements of App. R. 46 with regard to format and content. A review of Mother's brief reveals that she failed to include a Statement of Facts and Summary of the Argument. Her Statement of the Case is a rambling ten-page accumulation of dates, quotes from the trial court, and contains

argumentative statements. Further, the Argument section of her brief contains no headings, no statement of the standard of review, and no cogent reasoning. Additionally, none of her contentions are supported by citations to authorities or relevant parts of the record. Therefore, we conclude that Mother's argument is inadequate by the standards set forth in App. R. 46.

Moreover, we note that pro se litigants must follow rules of appellate procedure. *Angleton v. Estate of Angleton*, 671 N.E.2d 921 (Ind. Ct. App. 1996). Thus, Mother proceeding pro se has no bearing on the requirement that she has to present a brief in compliance with the rules. When an appellant does not follow the rules of appellate procedure, we have the authority to waive the Appellant's entire argument. *Harris v. Harris*, 690 N.E.2d 742 (Ind. Ct. App. 1998). However, waiver notwithstanding, we will attempt to address the merits of the Mother's contentions.

II. *Order to Pay Child Support Arrearage*

First, Mother contends that the trial court improperly ordered her to pay child support arrearage. Specifically, Mother asserts that she should not be ordered to pay any support arrearage because (1) the November 17, 2004 agreement did not allege any arrearages, and (2) various expenditures she made for D.E. should be credited against the ordered child support obligation. We disagree.

Decisions regarding child support generally rest within the sound discretion of the trial court. *Decker v. Decker*, 829 N.E. 2d 77, 79 (Ind. Ct. App. 2005). We reverse such a determination only if there has been an abuse of discretion or the trial court's determination is contrary to law. *Id.* Further, credits allowed for payments not

conforming to the support order will generally not be allowed. *Id.* However, in some circumstances, our courts have recognized narrow exceptions to this rule for payments made directly to the mother, payments made by an alternative method agreed on, payments covered when the non-custodial parent takes custody of the children with the other parent's consent, and payments made toward the funeral expenses of a child. *Kaplon v. Harris*, 567 N.E.2d 1130, 1133 (Ind. 1991).

In the present case, Mother does not cite relevant authority to support her assertion that the trial court improperly ordered her to pay arrearage. On the other hand, Father directs our attention to *Decker* to support his contention that nonconforming payments are not a substitute for making the required support payments. *Decker*, 829 N.E.2d at 80. In *Decker*, a father wanted to receive credit because he provided child-care while the mother was at work in lieu of making the required child support payments. *Id.* at 80. We found that the father was not entitled to nonconforming child support payments. *Id.* We reasoned that even if the father provided care for the child, the service did not substantially comply with the written decree, as the written decree required him to make weekly support payments. *Id.*

Here, Mother asserts that she paid for D.E.'s school clothes, supplies, shoes, sports expenses, school-related music rentals, and other expenses. However, similar to the situation in *Decker*, our review of the record reveals that no written order existed stating that Mother is entitled to reimbursement of expenses. Additionally, Mother does not allege any exceptions to the general rule that would allow her credits for nonconforming payments. *See Kaplon*, 567 N.E.2d at 1133; *Decker*, 829 N.E. 2d at 79-80. We agree

with the trial court in finding that when the non-custodial parent unilaterally chooses to provide nonconforming payments, a non-custodial parent is not generally allowed credit. *See Decker*, 829 N.E. 2d at 79. Accordingly, the trial court did not abuse its discretion in determining that Mother was not entitled to credit for nonconforming child support payments and ordering her to pay child support arrearage.

III. *Parenting Time Exchanges*

Next, Mother contends that Father was in contempt with regard to parenting time exchanges. Specifically, Mother alleges that Father violated the trial court's Order when he returned D.E. at 7:20 p.m. rather than at 5 p.m. on the evening of Mother's rehearsal dinner, as she requested. It is within the sound discretion of the trial court to decide whether a party is in contempt. *Sutton v. Sutton*, 773 N.E.2d 289, 297 (Ind. Ct. App. 2002). To hold a party in contempt for a violation, the trial court must find that the party acted with willful disobedience. *Id.* We will not reweigh the evidence or judge the credibility of the evidence unless a mistake is revealed after a review of the record. *Id.*

In the present case, both parties agree that there was no specific provision in any order requiring the exchange of D.E. at a particular time for a wedding rehearsal dinner. The language of the order did not require Father to return D.E. in time for a 5:00 p.m. dinner. Rather, the November 17, 2004 order is only dispositive as to D.E. attending the wedding ceremony of either parent. As the court noted, both parties were unclear on the proper time for the exchange of D.E., and the record is devoid of any evidence establishing a firm time. Thus, the trial court exercised its discretion to find that Father's return of D.E. at 7:20 p.m. could not be the subject of a contempt of court for violation of

a court order, as he did not act in willful disobedience of the exchange order. We agree. Accordingly, we refuse to disturb the trial court's decision.

CONCLUSION

Based on the forgoing, we conclude that the trial court properly ordered Mother to pay child support arrearage in the amount of $4,613.00. Additionally, we conclude that the trial court did not abuse its discretion by refusing to find Father in contempt.

Affirmed.

BAILEY, J., and MAY, J., concur.